

## **SECTION II: VENDOR AUTHORIZATION**

<b>Overview</b>	All full service grocery stores and pharmacies interested in becoming an authorized WIC Vendor must complete an application. The selection criteria used by the Department is designed to ensure that Vendor participation in the Missouri WIC program will adequately fulfill the needs of the WIC program participants.
<b><u>2.1 WIC Vendor Application</u></b>	
<b>Enrollment</b>	Generally, Missouri <i>WIC Vendor Agreements</i> are given for a period of three (3) years. The Department may accept applications anytime during the agreement period. Agreements may be issued throughout the current agreement period with all agreements expiring on the same date. However, the Department reserves the right not to accept any new applications during the last one hundred and twenty (120) days of the current agreement period.
<b>Renewals</b>	The Department will notify all authorized Vendors in good standing, prior to the expiration of the current agreement period, and mail each an authorization application. Authorization applications must be returned to the Department in the specified time period. The applicant store is responsible for returning the application in such a manner that the Vendor obtains evidence of receipt by the Department.
<b>Incomplete Applications</b>	Incomplete applications will be returned one time only to the applicant for completion. Incomplete applications returned to the applicant must be completed and re-submitted to the Department within thirty (30) days from the postmarked date of the returned application. Applicants who fail to return a completed application will not be considered for authorization.
<b>Complete Applications</b>	All completed applications received by the Department will be reviewed. The Department will notify applicants within sixty (60) days from receipt of the completed application, whether or not the application was approved.
<b>Vendor Responsibilities</b>	All owners, operators and managers of retail grocery stores and pharmacies that are making application to the program must understand how the Missouri WIC program operates. Compliance with all policies, procedures, and regulations of the Missouri WIC program is the responsibility of each authorized Vendor.
<b>Issuing Agreements</b>	The Department is not required to issue an agreement to an applicant, a previous vendor whose agreement has expired, or an applicant who is purchasing a store that is currently authorized. It is at the sole discretion of the Department whether an agreement will be issued.

## **2.2 Authorization Process**

<b>Authorization Process</b>	Each retail store applying for WIC authorization must complete a six (6) - phase process.
<b>Phase One:</b>	Vendor applicants must complete and submit all the required application forms to the State WIC office. All information <b>MUST</b> be complete. Any incomplete and/or unsigned documents will <b>NOT</b> be accepted. Please assure required signatures are obtained on all forms and send the completed application to the State WIC office using the address on page 14 of the application packet.
<b>Phase Two:</b>	<p>The application will be reviewed for completeness. Applicants will be notified by letter of missing, incomplete or unsigned documents.</p> <p>The State WIC office has <b>sixty (60) days from receipt of the completed application</b> (and supporting documentation) to review and determine if the store qualifies for the program.</p>
<b>Phase Three:</b>	If all required information meets the selection criteria and the application is approved, the Department then conducts an on-site visit to verify the information provided in the application is accurate. The on-site inspection verifies whether or not the store meets all the selection criteria. <b>NO</b> agreement will be awarded prior to the visit. The Department does not guarantee an agreement will be offered after the on-site visit.
<b>Phase Four:</b>	The agreement will be sent for Vendor's signature and returned to the Department for further processing. When the agreement with the Vendor's signature is received it will be processed for Department signatures. <b>This period may take up to four (4) to six (6) weeks.</b>
<b>Phase Five:</b>	Store owners, managers, and/or store training staff will be required to attend a new Vendor training session that may be held in Jefferson City, Missouri or at one of the WIC district offices. Failure to attend this training will delay the start of the agreement. <b>NOTE: Phases four (4) and five (5) may occur simultaneously.</b>
<b>Phase Six:</b>	The agreement will be in effect when all signatures have been obtained, training has been received, the store has received the Vendor identification stamps, and the store is notified of the date it may begin to accept WIC checks.

## **2.3 Selection Criteria**

### **General Criteria**

The Department has established criteria for the selection of Vendor applicants to whom agreements authorizing the transaction and redemption of WIC checks will be awarded. Every authorized Vendor must comply with all Vendor selection criteria throughout the agreement period.

The Department may reassess a Vendor at any time during the agreement period. The Department will terminate the agreement if the Vendor fails to comply with the current Vendor selection criteria. The Department reserves the right to make exceptions to the vendor selection criteria to address inadequate participant access.

### **Defining Who is a Vendor**

Vendor applicants must be either a full service grocery store or a pharmacy located within the state of Missouri. Full service grocery stores must stock, at a minimum, all of the following food groups: canned, fresh and frozen fruits and vegetables, fresh and frozen meats and poultry (luncheon meats and deli meats do not qualify), dairy products, cereals, breadstuffs and infant foods and formula, in order to qualify.

Pharmacies shall provide only special infant formulas. Stores that stock and sell only WIC approved foods are not eligible for authorization as an approved Missouri WIC Vendor.

### **Minimum Quantity For Food Groups**

To be considered a full service grocery store in Missouri a retail store must stock the following quantities of products in each food group. For canned, fresh and frozen fruits and vegetables a “case” is considered to be a minimum of twelve (12) cans or packages.

1. **Fresh Vegetables:** Minimum of ten (10) pounds each of at least five (5) varieties of vegetables listed. Choices may include broccoli, cabbage, carrots, cauliflower, celery, corn on the cob, green beans, lettuce, onions, bell peppers, squash, tomatoes, turnips, zucchini, sweet potatoes and potatoes (Potatoes must be either ten (10) bags of various weights or ten (10) pounds of loose potatoes).
2. **Fresh Fruits:** Minimum ten (10) pounds each of at least four (4) of the following: oranges, pears, apples, bananas, grapes and grapefruits.
3. **Frozen Vegetables:** Minimum of one (1) case each vegetable, minimum of four (4) varieties of the following: mixed vegetables, corn, corn on the cob, peas, broccoli, carrots, cauliflower, green beans and spinach.
4. **Frozen Fruits:** Minimum of one (1) case of each fruit, minimum of two (2) varieties of the following: strawberries, peaches, blueberries, mixed fruit, blackberries and mixed berries.

5. **Fresh and Frozen Meats and Poultry:** Minimum of thirty (30) pounds per variety of meat and poultry. Beef, pork and poultry must all be stocked with at least a minimum of three (3) types of cuts and ten (10) pounds for each type of cut offered (i.e. chops, steaks, hamburger, roasts, bacon, sausage, leg quarters, thighs, wings, etc.). Deli style meats and sausages do not apply. Meats and poultry may be a combination of fresh and frozen.
6. **Canned Fruits:** Minimum of one (1) case of each fruit, minimum of three (3) varieties of the following: peaches, pears, pineapple, mixed fruit and fruit cocktail.
7. **Canned Vegetables:** Minimum of two (2) cases of each vegetable, minimum of three (3) varieties of the following: peas, green beans, corn (cream or niblet), beets, carrots, spinach or other beans.
8. **Breadstuffs:** Minimum of eighteen (18) loaves of bread in at least two (2) varieties and/or brands.
9. **Dairy products, cheese, cereals, juices, infant formula, and other WIC approved foods must meet minimums required in Section VI of the WIC Vendor Manual.**

**Business  
Hours**

The Vendor must be open a minimum of six (6) days per week between 9:00 a.m. and 6:00 p.m. daily. Store hours must be posted.

**Business  
Integrity**

The Department will consider business integrity when determining eligibility for selection as a Vendor. Activities indicating a lack of business integrity include, but are not limited to the following:

- Fraud;
- Antitrust violation;
- Embezzlement, theft, or forgery;
- Bribery;
- Falsification or destruction of records;
- Making false statements or claims;
- Receiving stolen property;
- Obstruction of justice;
- Other evidence reflecting on the business integrity and reputation of the applicant;
- Arson;
- Conspiracy;
- Official records of removal from any federal, state or local programs;
- or
- Other evidence reflecting on the business integrity and reputation of the applicant.

The Department will not have an agreement with any Vendor/applicant that has been disqualified from an USDA Food and Nutrition Services (FNS) program during the last six (6) years or if any of the Vendor

applicant's current owners, officers, or managers have civil judgment entered against them for, or have been convicted of any activity indicating a lack of business integrity. The Department shall determine which offenses apply.

The Vendor must have and maintain a positive compliance history with any and all FNS programs, if currently or formerly a Vendor for those programs. Upon request by the Department, the applicant must submit an original Highway Patrol Background Check to verify criminal record history. The cost for a background check is \$5.00 and the Vendor applicant is responsible for paying the fee. The original Highway Patrol Background check is to have been processed within the past sixty (60) days to be considered valid.

**Conflict of Interest**

The Vendor applicant must be free of any conflict of interest, as defined by applicable State laws, regulations and policies, between the store and the Department or its contracted providers. Conflict of interest includes any activities which would tend to influence a decision, create a bias or prejudice which would favor one side or the other in conflict with the Department or contracted local WIC providers employee's duties, or which conflict with the accomplishment of the Department's mission or goals. Examples are as follows:

- Solicitation or other influence for personal reasons or benefits.
- Personal relationships, either of an intimate or financial nature.
- Ownership or significant financial interest in a private business, including family member(s) within the fourth degree.
- Membership in or serve as a board member of any association or corporation participating in a program regulated or operated by the Department, such as a member of a county board of health.

**Business Stability**

The Vendor must be an established business, open to the public for at least one (1) year in the current location or must own and operate at least one (1) currently authorized WIC Vendor store that is in good standing in Missouri. The Department can waive this condition for a current vendor in good standing that is adding an additional location. Please note that the purchase of an existing authorized store does not negate this requirement. The new owner must meet this criterion.

The store name on the application must be the same name as registered with the Secretary of State or the owner's full name must appear in the store's name, i.e. John Doe's Grocery. Stores using fictitious names or names other than the owner's full name must be registered with the Secretary of State's office. If registered as a foreign corporation (incorporated in a state other than Missouri) the owner must identify the state in which the corporation is registered.

## Pricing

The pricing peer group shall be used for purposes of determining whether a Vendor applicant meets the pricing requirements of the program and whether current retail vendors are exceeding the state price for the peer group they are in. The retail prices for WIC approved foods must not be greater than the Department's allowable variance from the statewide average prices. Prices of all WIC approved foods must be posted on the shelves or on the products.

**Current Vendors:** Current retail vendors will be placed in the pricing peer groups indicated below. Each retail vendor will, on a quarterly basis, have their prices reviewed using the average WIC food prices established for each peer group. The average WIC food prices will be calculated based on the prices submitted by the retail vendors on the Quarterly Food Price Survey.

Any retail vendor with WIC food prices that are more than ten (10) percent over the average price for the peer group food will be placed on the high-risk vendor list. Immediate action will be taken in the form of an on-site monitoring to confirm food prices and to check for any additional areas of non-compliance. Vendors will be required to reduce prices to conform with peer group pricing within thirty (30) days of notification or may be removed from the program.

**Vendor Applicants:** For Vendor applicants, each applicant's food prices will be used in the pricing peer group process. The Vendor applicant will initially be placed within Peer Group Class II, unless the new applicant is a member of a grocery store chain or a discount grocer, in which case they will be placed into Peer Group Class III or IV. The new vendor will remain in this peer group for the first six (6) months. After six (6) months, the retail vendor would have its peer grouping status re-evaluated. Using an extrapolation of the monthly average of the retail vendor's WIC sales, WICNS will determine whether the vendor's current peer grouping needs to be changed.

If the vendor applicant's store prices for WIC foods are more than ten (10) percent over the average price for the peer group or the State's maximum food price limit for the identified food packages, the application will not be approved. The applicant will be informed that they have failed to meet the program's selection criteria. The vendor applicant may then adjust their pricing and reapply after one hundred and eighty (180) days.

### **Pricing Peer Groups**

- **Class I:** Stores with annual WIC sales of \$72,000 or below.
- **Class II:** Stores with annual WIC sales of \$72,001 - \$2,000,000.
- **Class III:** Stores owned by major chains, e.g., Dierbergs, Dillons/Gerbes, Hy-Vee, Kroger, Price Chopper, Price Cutter, Ramey, Shop-N-Save, and Schnucks.
- **Class IV:** Stores that are discount groceries and hypermarkets, e.g., K-Mart and Wal-Mart.

**Minimum Store Square Footage**

The Vendor's store must have a minimum of 1,500 square feet of space allocated solely for food products, including both WIC and non-WIC foods. This area does not include storage areas, meat cutting areas or walk-in coolers or freezers.

**Minimum Stock of WIC Approved Foods**

The store's inventory must meet the minimum stock of WIC approved foods as defined in Section VI of this manual. The store must have adequate inventory to supply WIC customers with enough approved foods to fully transact all WIC checks presented. This includes before, during, and after a heavy volume of WIC redemption activity.

Pharmacies and grocery stores with pharmacies authorized to supply medically prescribed infant formula do not have stocking requirements for such formulas, but must provide all such formulas within seventy-two (72) hours of presentation of a WIC check by a participant or advance notification of need by a local WIC provider or by the state agency.

**Percentage of Food Sales**

Vendor applicants must submit to the Department written sales or financial statements, reports, tax forms or other records sufficient for establishing gross sales, food sales, and food stamp sales information upon request. Failure to submit requested documents or providing false information will result in the application being denied. Additionally, all sales of alcohol, tobacco and Food Stamp Program sales must be reported. The Vendor applicant must be operating a full service grocery store at the location identified in the application, which has gross food sales of at least seventy-five (75) percent of total gross grocery receipts, excluding alcohol and tobacco. If either alcohol or tobacco product sales individually or in aggregate comprise twenty-five (25) percent or more of total gross grocery receipts, an Agreement will not be offered. Pharmacies are exempted from this requirement due to their WIC approved item limitations.

Upon request from the Department the Vendor applicant must supply the following information:

1. The percentage of anticipated food sales by type of payment, i.e., cash, FSP, WIC and credit/debit.
2. If the Vendor applicant store is already open for business, the total food sales during the last year. To the extent possible, validate the information on the percentage of anticipated food sales by the type of payment and/or the total food sales against other data sources.

If the Vendor applicant (i.e. ownership entity) was previously authorized by the state agency, and the state agency has the necessary historical data (e.g. annual WIC and FSP redemptions, a total food sales amount, documentation that the store was a WIC-only store) a review of that information will be performed to determine whether the previously authorized store location(s) was an above fifty (50) percent Vendor.

**Percentage of  
Store Sales**

The Department will not authorize a new Vendor that is expected to derive more than fifty (50) percent of its annual revenue from the sale of food items for WIC checks. This includes any ownership entity that currently has a WIC authorized store, as well as an entirely new Vendor applicant.

**Above 50 Percent  
Vendors**

Missouri will not authorize any Vendors who derive more than fifty (50) percent of their store's sales on the sale of WIC foods after December 30, 2005. Any Vendor who is found to meet this criteria will be notified that their WIC Vendor Agreement will be terminated unless it is determined that this Vendor is needed due to inadequate participant access.

Any Vendor or applicant that is denied authorization because the State agency determines that they are expected to derive more than fifty (50) percent of their store's sales from WIC food items, is eligible for an abbreviated administrative review. The validity and appropriateness of the state agency's criteria for determining whether a Vendor applicant is expected to be above fifty (50) percent Vendor are not subject to administrative review, as stated in Code of Federal Regulations 246.12(a)(1)(iii)(A). In addition, the state agency's participant access determination is not subject to administrative review as stated in section 246.18(a)(1)(iii)(B) of the WIC regulations. The administrative review is solely to determine if the state agency properly applied the criteria based on the documentation provided by the Vendor applicant.

**Restrictions on  
Vendor Incentive  
Items**

The state agency is prohibited from authorizing or making payments to Vendors that provide incentive items or other free merchandise, except food or merchandise of nominal value to program participants unless the Vendor provides to the state agency proof that the Vendor obtained the incentive items or merchandise at no cost.

This incentive item and free merchandise restriction applies to for-profit Vendors:

- For which more than fifty (50) percent of the annual revenue of the Vendor from the sale of food items consists of revenue from the sale of supplemental foods that are obtained with WIC checks; or
- Who are new applicants likely to meet the criteria listed above.

**WIC Sales  
Revenue**

The Vendor must have a minimum of \$500.00 dollars monthly in WIC sales revenue in order to remain in the WIC program. Any Vendor who fails to maintain this monthly level may be removed from the program and cannot reapply for an authorization Agreement for a period of one (1) year from the date of the Agreement termination. Note: Pharmacies are exempt from this requirement.



<b>WIC Sales Inactivity</b>	Any Vendor who fails to have any WIC sales activity for a period of sixty (60) days may be removed from the program. Any Vendor removed from the WIC program due to WIC sales inactivity cannot reapply for an authorization Agreement for a period of one (1) year from the date of the Agreement termination. Note: Pharmacies are exempt from this requirement.
<b>Special Ordered Infant Formula Pricing Limitations</b>	WIC retail vendors and pharmacies are only allowed to mark up the special ordered infant formula no more than ten (10) percent over the Vendor's wholesale price. In the event that the formula has special shipping costs an additional five (5) percent of the case price may be added to the case price of the special infant formula. The shipping price is then distributed evenly among the number of units ordered.
<b>Pharmacy Only Vendors</b>	Pharmacy Only Vendors are authorized to provide special ordered infant formulas. They are not authorized to sell any other types of WIC food items or Primary Contract Infant Formulas. The Primary Contract Infant Formulas are the infant formulas, which Missouri has contracted with the formula manufacturer to provide to WIC participants. These Primary Contract Infant Formulas are identified in Section VI of the WIC Vendor Manual and on page 18 of the WIC Vendor Application Packet.
<b>Sanitation</b>	<p>The Vendor must have and maintain a positive sanitation history as evaluated using the Department's current food establishment regulations (Missouri Food Code). A negative sanitation history includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>• Temporary closings due to unsanitary conditions.</li> <li>• Documented non-compliance in correcting unsanitary conditions.</li> <li>• Current or unmet work orders for corrective action.</li> <li>• On the most current sanitation inspection, non-compliance with the current food establishment regulations in five (5) or more critical control points.</li> <li>• During the WIC pre-contract on-site store inspection the following specific items are checked: <ul style="list-style-type: none"> <li>a. Floors are clean, in good repair, swept free of dirt, grime, filth, and/or excess rubbish.</li> <li>b. Garbage or refuse within the store premises is stored (covered) so that it is inaccessible to insects and/or rodents.</li> <li>c. No evidence of outdated milk, eggs, cheese, or infant formula.</li> <li>d. No areas that may create an unsafe environment for customers.</li> </ul> </li> </ul>
<b>Exceptions</b>	The Department reserves the right to make exceptions to (waive) the Vendor selection criteria to address inadequate participant access. However, pricing and minimum WIC approved food stocking requirements are not waivable, per federal regulations.

## **2.4 WIC Vendor Agreement**

**Overview** The *WIC Vendor Agreement* is between a named Vendor and the State of Missouri, Department of Health and Senior Services (DHSS). The agreement authorizes a Vendor's participation in the Missouri WIC program under State and Federal regulations (USDA Regulations 7 CFR Part 246.12).

**Agreement Period** Generally, Agreements are given for a three (3) year period beginning October 1<sup>st</sup> (the start of the Federal Fiscal Year). Unless otherwise notified by the Department, all Agreements expire at midnight on September 30<sup>th</sup> (the end of the Federal Fiscal Year). New Vendors that join the program between these dates will be given an Agreement for the remainder of the current Agreement period.

**No vendor shall accept WIC checks for redemption prior to the date specified on the *WIC Vendor Agreement*, or after the expiration date of the *WIC Vendor Agreement*.**

**Contract Category** The Agreement categories are based on the types of foods for which a Vendor is authorized to redeem WIC checks. The Department will determine the category of Agreement offered to a Vendor.

Category	Description
1	All WIC approved foods, Primary Contract Infant Formulas and all special infant formulas. (Full service grocery stores with pharmacies.)
2	All WIC approved foods, Primary Contract Infant Formulas and the option of providing additional special infant formulas available through the Vendor's grocery wholesaler. (Full service grocery stores without pharmacies.)
3	Special Infant Formula Only. This type of agreement is reserved for Pharmacies Only. <b>Note: Primary Contract Infant Formulas are not allowed for redemption with this type of contract.</b>
4	This category identifies the headquarters for a group of stores of varying size, which are owned by a single entity (i.e., sole proprietorship, partnership, "S" corporations, limited liability company, regular corporation). Each store is evaluated separately with the selection criteria and assigned one of the agreement categories above.

**Store Name Change** The *WIC Vendor Agreement* specifies the name of the store and is not transferable. **Any change of the store name makes the Agreement null and void.**

## **Change of Ownership**

A Vendor must give sixty (60) days advance notice to the Department of ownership changes. This will allow adequate time to process the Agreement application for the new owner. A new vendor number will be required. **Any change of store ownership makes the Agreement null and void.**

**Note:** Vendors may not use the income generated from WIC check redemption or WIC customers as a guarantee or incentive for prospective buyers/owners.

## **Store Location**

The WIC Vendor Agreement specifies the location of the store. All Missouri WIC authorized stores must be stationary buildings, fixed in one location at all times. **Any change of the location of a store makes the Agreement null and void.**

## **Chain Store**

**Chain stores are not automatically entitled to have all locations approved.** Each location must be evaluated against all selection criteria as if it were a single, independent entity and will be individually listed on the Agreement attachment for the corporation Agreement.

By signing the *WIC Vendor Agreement*, a Vendor with stores in multiple locations has accepted responsibility for program operations of all participating locations, which are listed on an Agreement Attachment #1. Notwithstanding, all stores will be assessed, categorized and treated individually and not as one unit. Additions or deletions of individual store locations may be requested by vendors, shall be subject to the same review procedures as single location applicants, and shall be effective upon a signed Agreement amendment by the Department. The Department will determine termination or disqualification of individual stores, with a fifteen (15) day written notice, unless required to be immediate by the Federal Regulations.

## **Expectations**

Before signing the *WIC Vendor Agreement*, the owner, operator, manager, or other person(s) authorized to sign the agreement should carefully read it.

**It is extremely important that Vendors review the entire Agreement and understand all expectations set forth by the Department before signing.**

The Vendor must comply with the provisions of the Agreement and must remain in compliance with all federal and state laws, statutes, policies, procedures, manuals, and regulations of the WIC program, including any changes made during the Agreement period. Failure to do so will result in Agreement termination. This Agreement is not a license or property interest.

<b>Termination</b>	A <i>WIC Vendor Agreement</i> may be terminated by either party, for cause, by giving at least thirty (30) days advance notice to the other.
<b>Ceasing Operations</b>	A Vendor must give sixty (60) days advance written notice to the Department when ceasing operations.
<b>Renewal</b>	If the Vendor wishes to continue to be authorized beyond the period of the current Agreement, or if terminated or disqualified, the Vendor must reapply for authorization. Neither the Department nor the Vendor is under any obligation to renew a <b><i>WIC Vendor Agreement</i></b> . Expiration of the Agreement is not subject to appeal.
<b>Vendor's Rights</b>	<p>The Vendor has the right of appeal when an application to participate is denied, when during the course of the Agreement a Vendor is terminated or disqualified, or when another adverse action, which affects the Vendor's participation in the WIC program, is taken by the Department, with the following exceptions:</p> <ul style="list-style-type: none"> <li>• The expiration of an Agreement and the Department's determination regarding participant access shall not be subject to administrative review.</li> <li>• Disqualification of a Vendor as a result of disqualification from the Food Stamp Program shall not be subject to administrative or judicial review.</li> </ul>

## **2.5 Appeals Process**

<b>Appeals Process</b>	<p>The state agency will use a uniform appeal process to evaluate and respond to all appeal requests from authorized Vendors or applicants.</p> <p>The Vendor or applicant has the right to appeal the following adverse actions:</p> <ol style="list-style-type: none"> <li>1. Denial of authorization.</li> <li>2. Termination for cause.</li> <li>3. Disqualification.</li> <li>4. Fines.</li> <li>5. Imposition of a Civil Money Penalty (CMP) in lieu of disqualification.</li> </ol>
<b>Vendor Request Hearing</b>	The Vendor or applicant must provide the state agency with a written request for a hearing within fifteen (15) days of the receipt of the notice of denial or adverse action. The written request shall describe the action being appealed.

The state agency will provide full administrative reviews for all denials of Vendor applications and for imposed adverse actions. A Vendor or applicant must fully comply with all appeal processes or forfeit appeal rights.

The Vendor may submit a written request for an abbreviated administrative review when the state agency has terminated the WIC Vendor Agreement because of a change in Vendor ownership. The request must be received by the state agency within fifteen (15) days of the receipt of notice by the Vendor.

### **Vendor May Not Appeal**

The Vendor or applicant does not have the right to appeal the following actions:

1. Expiration of the WIC Vendor Agreement.
2. Disqualification of a Vendor as a result of disqualification from the Food Stamp Program.
3. Validity of the state agency's participant access criteria and determinations.
4. The state agency's determination of whether or not a Vendor had an effective policy to prevent trafficking.
5. The state agency's determination whether or not the ownership was not aware of, did not approve of, and was not involved in the violation.
6. Denial of authorization based on state procurement procedures.
7. Disputes regarding WIC check payments and vendor claims.

### **Written Notice**

The state agency shall provide a Vendor with written notification of an adverse action at least fifteen (15) days prior to the effective date of the action. The written notice will include:

1. The cause or causes for the action.
2. The effective date of the action.
3. The right to appeal the adverse action.

When the state agency sends a notice of an adverse action as a result of a conviction for trafficking in food instruments, including selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments, the effective date of the adverse action is the date the notice is received by the Vendor.

The state agency may postpone, at its discretion, the effective date of an adverse action until the decision of a hearing is rendered. Appealing an adverse action does not relieve a Vendor permitted to continue participating in the program while an appeal is pending from the obligation of continued compliance with the terms of all written agreements or contracts with the state agency.

**Appeal  
Information**

The state agency will provide the Vendor the following information pertinent to the appeal:

1. No less than ten (10) days advance notice of the time and place for the hearing.
2. The opportunity to reschedule the hearing one time.
3. The opportunity to review all written case records prior to the hearing which relate to the denial of authorization or adverse action, within the limits of 7 CFR 246.26(e).
4. The opportunity to be represented by counsel if desired.
5. The opportunity to call witnesses.
6. The opportunity to confront and cross-examine adverse witnesses. When it is necessary to protect the identity of State agency staff or contractors, such examination shall be conducted behind a protective screen or other device.

The state agency will provide an impartial decision-maker who will preside over an administrative hearing and submit a written decision to the state agency. The decision will be based solely on whether the State agency has correctly applied federal and state statutes, regulations, rules, policies, and procedures governing the WIC program according to the evidence presented at the hearing.

**Abbreviated  
Review**

For an abbreviated administrative review, a decision-maker will render a written decision based solely on whether the state agency has correctly applied federal and state statutes, regulations, rules, policies, and procedures governing the program according to the evidence presented at the hearing. The decision-maker will be someone other than the person who rendered the initial decision on the action.

**Final Decision**

The state agency will provide the Vendor or applicant with a written notification of the final decision within ninety (90) days from the date of receipt of the Vendor's or applicant's request for a hearing. The timeframe is only an administrative requirement for the state agency and does not provide a basis for overturning the state agency's adverse action if a decision is not made within the specified timeframe.

The state agency is not responsible for losses incurred by the Vendor as a result of disqualification and/or denial of an application to participate.

If the administrative hearing results in a final decision adverse to the Vendor, the appellant may seek judicial review of the decision to the extent authorized by law.

**Failure to Appeal**

The Vendor who fails to appeal or does not appeal within the fifteen (15) day period may not contest the subsequent sanctions taken by the Department.

## **2.6 Quarterly Food Price Survey**

**Policy** By signing the *WIC Vendor Agreement*, the Vendor agrees to submit to the Department, on the appropriate form, current shelf prices for WIC approved foods quarterly or as requested.

The Vendor is responsible for completing the Quarterly Food Price Survey in its entirety and returning it to the Department or its designee within the timeframes given.

**Use** The information obtained from the Quarterly Food Price Survey is used to calculate statewide average prices, which in turn are used:

1. To determine each store's WIC food prices. Vendors that are found to be above the allowed variance from the peer group's average prices and/or the statewide average prices for are notified. Vendors whose WIC food prices are more than the allowed variance of the peer group's average prices and/or statewide average prices and fail to reduce them to the acceptable level, are subject to Agreement termination.
2. To set WIC maximum check price limits.
3. To compare to the Vendor's charges/billings on WIC checks.
4. To determine appropriate billings during Department WIC check review.
5. To project program food expenditures for budgeting purposes.

The information is also used to determine the availability of a nutritionally qualified food being considered for Missouri WIC approval. This is why Vendors may notice that not all of the foods on the Quarterly Food Price Survey are currently WIC approved. The Vendor must not use the Quarterly Food Price Survey as a WIC approved food list.

## **2.7 Inadequate Participant Access**

**Overview** At the Department's discretion, a Vendor may be authorized outside of the normal authorization process when a situation of inadequate participant access arises. Participant access determinations shall be made by, and are solely at the discretion of, the Department.

If the Department determines that WIC program disqualification of a Vendor due to Food Stamp Program (FSP) disqualification would result in inadequate WIC program participant access to WIC foods, the Department will assess a Civil Money Penalty (CMP) in lieu of disqualification. A CMP will not be issued in lieu of disqualification for a third or subsequent sanction. This disqualification is not subject to administrative or judicial review under the WIC program.

Situations causing inadequate participant access may be the result of, but are not limited to:

- The disqualification of an authorized Vendor.
- Change of ownership or location of an authorized Vendor.
- Disaster or other cause for the loss of, or access to, an authorized Vendor.

In urban areas, where public transportation is available, participant access may be considered inadequate if any of the following conditions apply:

- A Vendor density of less than one (1) per 500 participants.
- Participants must travel more than an average of one (1) mile to a Vendor.
- Other conditions exist which makes a Vendor within one (1) mile difficult for participants to access.

In rural areas (non-class one (1) counties), participant access may be considered inadequate if any of the following conditions apply:

- There are less than two (2) authorized Vendors in the county.
- Participants must travel more than an average of fifteen (15) miles to a Vendor.
- Other conditions exist which makes a Vendor within fifteen (15) miles difficult for participants to access.

The Department may declare a situation of inadequate participant access to:

- Accommodate special populations (e.g., migrant workers and their families).
- Respond to disasters.
- Respond to sudden or unexpected population changes to meet the public health mission of the Department and the WIC program.

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End of Section II: Vendor Authorization